

Article VII Part 9

Nonconforming Uses, Lots and Structures

~~§ 230-61 Continuation of existing use.~~

~~Except as provided in this article, any use of land, building, structure or part thereof existing at the time that this chapter or any amendment hereto becomes effective may be continued after the passage of this chapter, provided that the use and character of the premises at the time of the enactment of this chapter remains unchanged.~~

~~§ 230-62 Change in use.~~

~~A nonconforming use may only be changed to a conforming use. A conforming use may not thereafter be changed back to any nonconforming use.~~

~~§ 230-63 Extensions and enlargements.~~

~~A nonconforming use shall not be enlarged or extended beyond those areas of the building arranged or designated for such nonconforming use at the time of the passage of this chapter, except as follows:~~

- ~~A.— In any commercial or industrial district, any nonconforming use may be enlarged to an extent not exceeding 25% of the gross floor area devoted to such nonconforming use. In no case shall such enlargement extend beyond the lot occupied by such nonconforming use.~~
- ~~B.— When the total of all enlargements equals 25% of the gross floor area existing at the time such use became a nonconforming use, no further enlargement shall be permitted.~~

~~§ 230-64 Repairs and alterations.~~

- ~~A.— Normal maintenance, including nonstructural repairs and incidental alterations of a building or structure containing a nonconforming use shall be permitted.~~
- ~~B.— No structural alterations shall be made in a building or other structure containing a nonconforming use except:
 - ~~(1) When required by law.~~
 - ~~(2) To restore to a safe condition any building or structure declared unsafe by the Building Inspector.~~
 - ~~(3) To permit enlargements as provided in this article.~~~~

~~§ 230-65 Restoration.~~

- ~~A.— No nonconforming building or other structure which has been damaged or destroyed by any means, where the cost of repairs totals or exceeds 50% or more of its assessed value, as assessed for City taxes on the last previous assessment roll, shall be rebuilt or repaired except in conformance with this chapter.~~

~~B.— Nonconforming buildings or other structures which have been damaged where the cost of repairs is less than 50% of its assessed value may be repaired, replaced or reconstructed in conformance with the following:~~

- ~~(1) Neither the floor area nor the volume of a nonconforming use shall be increased from the pre-damage floor area or volume of the nonconforming use.~~
- ~~(2) The application for a building permit to repair, replace or reconstruct a partially destroyed or damaged use or structure as herein authorized shall be made within six months of the occurrence.~~
- ~~(3) The repair, replacement or reconstruction shall be completed within six months following the issuance of the permit.~~

~~§ 230-66 Discontinuance.~~

~~A.— When a nonconforming use has been discontinued for a period of at least six months, the use shall not thereafter be reestablished and the future use shall be in conformance with the provisions of this chapter.~~

~~B.— Discontinuance of the active and continuous operation of a nonconforming use, a part or portion of the operation of the nonconforming use, for a period of 12 consecutive months is construed and considered to be an abandonment of such nonconforming use, regardless of any reservation of an intent not to abandon same or of an intent to resume active operations.~~

~~C.— If actual abandonment in fact is evidenced by the removal of buildings, structures, machinery, equipment and other evidences of such nonconforming use of the land and premises, then the abandonment shall be construed and considered to be completed within a period of less than six months, and all rights to reestablish or continue such nonconforming use shall terminate.~~

§9-1 Purpose.

Within the districts established by this Chapter or amendments that may be adopted, there exist lots, structures, uses of land and characteristics of use that were lawful before this Chapter or amendments thereto were passed, but that would be prohibited, regulated or restricted under terms of this Chapter or future amendments. Regulations for the continuance, maintenance, repair, restoring, moving and discontinuance of such nonconforming lots, structures, land and uses are established for the following purposes:

- A. To permit these nonconformities to continue, but to minimize any adverse effect on the adjoining properties and development;**
- B. To regulate their maintenance and repair;**
- C. To restrict their rebuilding if substantially destroyed;**
- D. To require their permanent discontinuance if not operated for certain periods of time; and**

- E. To require conformity if they are discontinued, to bring about eventual conformity in accordance with the objectives of the Comprehensive Plan and Zoning Chapter of the City of Lackawanna

§9-2 Nonconforming Uses

- A. Continuation of existing use. Except as provided in this article, any use of land, building, structure or part thereof existing at the time that this chapter or any amendment hereto becomes effective may be continued after the passage of this chapter, provided that the use and character of the premises at the time of the enactment of this chapter remains unchanged.
- B. Change in use. A nonconforming use may only be changed to a conforming use. A conforming use may not thereafter be changed back to any nonconforming use.
- C. Discontinuance of a Nonconforming Use.
 - (1) When a nonconforming use has been discontinued for a period of at least six consecutive months, the use shall not thereafter be reestablished, and the future use shall be in conformance with the provisions of this chapter.
 - (2) Discontinuance of the active and continuous operation of a nonconforming use, a part or portion of the operation of the nonconforming use, for a period of 12 consecutive months is construed and considered to be an abandonment of such nonconforming use, regardless of any reservation of an intent not to abandon same or of an intent to resume active operations.
 - (3) If actual abandonment in fact is evidenced by the removal of buildings, structures, machinery, equipment and other evidences of such nonconforming use of the land and premises, then the abandonment shall be construed and considered to be completed within a period of less than six months, and all rights to reestablish or continue such nonconforming use shall terminate.

§9-3 Nonconforming Structures

- A. Restoration of a Damaged Structure.
 - (1) No nonconforming building or other structure which has been damaged or destroyed by any means, where the cost of repairs totals or exceeds 50% or more of its assessed value, as assessed for City taxes on the last previous assessment roll, shall be rebuilt or repaired except in conformance with this chapter.
 - (2) Nonconforming buildings or other structures which have been damaged where the cost of repairs is less than 50% of its assessed value may be repaired, replaced or reconstructed in conformance with the following:
 - i. Neither the floor area nor the volume of a nonconforming use shall be increased from the pre-damage floor area or volume of the nonconforming use.
 - ii. The application for a building permit to repair, replace or reconstruct a partially

destroyed or damaged use or structure as herein authorized shall be made within six months of the occurrence.

- iii. The repair, replacement or reconstruction shall be completed within six months following the issuance of the permit.

B. Extensions and Enlargements.

- (1) Nonconforming structures may be enlarged or extended, provided that the enlargement does not increase the degree of the existing nonconformity, and the enlargement or extension does not create a new nonconformity.
- (2) In any commercial or industrial district, any nonconforming use may be enlarged to an extent not exceeding 25% of the gross floor area devoted to such nonconforming use. In no case shall such enlargement extend beyond the lot occupied by such nonconforming use.
- (3) When the total of all enlargements equals 25% of the gross floor area existing at the time such use became a nonconforming use, no further enlargement shall be permitted.

§9-4 Nonconforming Lots

- A. In any R-1, R-2 or R-3 district in which single-family detached dwellings are permitted, a single-family detached dwelling and customary accessory structures may be erected on any single nonconforming lot of record at the effective date of adoption or amendment of this Chapter, notwithstanding limitations imposed by other provisions of this Chapter. Such lot shall be in separate ownership and not of continuous frontage with other lots in the same ownership.
- B. This provision shall apply even though the nonconforming lot of record fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than these applying to area or width, or both, of the nonconforming lot of record shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Zoning Board of Appeals.
- C. If two or more lots or combinations of lots or portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Chapter, and if all or part of the lots do not meet the requirements established for width and area, the lands involved shall be considered an undivided parcel for the purposes of this Chapter. The provisions of this Section shall not apply if any portion of said parcel shall, after the adoption of this Chapter or amendment, be used or divided in a manner which prevents or diminishes compliance with the requirements established by this Chapter or amendment thereto.

§9-5 Nonconforming Parking, Loading, and Stacking Facilities

- A. A structure, use or occupancy existing lawfully at the time this Chapter or any amendment thereto becomes effective, but which does not conform with the off-street parking, loading and stacking regulations, may be occupied or continued without such parking and/or loading spaces being provided.**

- B. Any such spaces that may be provided thereafter shall comply with the regulations of this Chapter.**

- C. If an existing structure, use or occupancy is altered so that there is an increase of the number of dwelling units, seating capacity or floor area, or if the use or occupancy is changed to one requiring more off-street facilities, then off-street parking, stacking and loading spaces shall be provided at least equal to the number required for the increased area for the structure or use in accordance with all provisions of this Chapter.**

§9-6 Repairs and Maintenance

- A. Normal maintenance, including nonstructural repairs and incidental alterations of a building or structure containing a nonconforming use shall be permitted.**

- B. No structural alterations shall be made in a building or other structure containing a nonconforming use except:**
 - (1) When required by law.**

 - (2) To restore to a safe condition any building or structure declared unsafe by the Building Inspector.**

 - (3) To permit enlargements as provided in this article.**